

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
LARRY SAVINO	:	DETERMINATION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 1981	:	
through November 30, 1981.	:	

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Petitioner, Larry Savino, 792 North Bedford Road, Mt. Kisco, New York 10549, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1981 through November 30, 1981 (File No. 804914).

On May 25, 1990 and April 23, 1990, respectively, petitioner, appearing pro se, and the Division of Taxation, by William F. Collins, Esq. (Peter J. Martinelli, Esq., of counsel), agreed to waive a hearing and have the controversy resolved upon the submission of documents. After due consideration of the record, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner filed a timely request for a hearing before the Division of Tax Appeals.

FINDINGS OF FACT

On April 9, 1987, the Division of Taxation ("Division") issued to petitioner, Larry Savino, a Notice of Determination and Demand for Payment of Sales and Uses Taxes Due for the quarter ended November 30, 1981, assessing tax due of \$747.50 plus penalty and interest.

The statutory notice was mailed to petitioner by certified mail on April 9, 1987. The Tax Compliance Division issued to petitioner an accounts receivable statement showing a balance due, including tax, penalty and interest, of \$1,542.97. The statement was dated July 15,

1987. Petitioner returned this statement to the Tax Compliance Division, stating: "I am appealing your request for taxes since I have already paid the taxes." This statement was received by the Tax Compliance Division on August 4, 1987. The envelope in which it was received was postmarked July 30, 1987.

The Bureau of Conciliation and Mediation Services issued an order to petitioner denying a conciliation conference on the ground that the request for conference was late filed. The order is dated October 2, 1987.

Petitioner filed a petition with the Division of Tax Appeals dated December 11, 1987 and received on December 16, 1987.

Petitioner concedes that he failed to file a petition requesting a hearing within 90 days after the mailing of the notice of determination. He explained that when he received the notice his fiance's mother was quite ill and that he was planning his marriage which occurred in October 1987. Because of these circumstances, he forgot to attend to the tax assessment until after the statute of limitation had expired.

#### CONCLUSIONS OF LAW

A. Section 1138(a)(1) of the Tax Law requires that a petition challenging a notice of determination issued under article 28 of the Tax Law be filed within 90 days after the giving of such notice. The Bureau of Conciliation and Mediation Services is responsible for providing conciliation conferences at the option of any taxpayer who, among other things, has received a notice of determination (Tax Law § 170[3-a][a]). A request for a conference suspends the running of the period of limitations for the filing of a petition requesting an administrative hearing (Tax Law § 170[3-a][b]).

Petitioner did not request a hearing in this matter until he received the statement of accounts receivable. That statement was dated July 15, 1987, i.e., after the statute of limitation for filing a petition expired. Petitioner's request for a hearing was postmarked July 30, 1987 and was not timely. Since petitioner failed to timely request a hearing or conciliation conference, the Division of Tax Appeals is without jurisdiction to consider his petition. There

is no provision in the Tax Law which would allow the Division of Tax Appeals to waive the statute of limitation, regardless of the reasons for the late filing.

B. The petition of Larry Savino is dismissed.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE